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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,571	09/14/2001	Martin Rahe	HBC 232-KFM	8714
7590	06/01/2004		EXAMINER	
Karl F Milde Milde Hoffberg & Macklin Suite 460 10 Bank Street White Plains, NY 10606				MCCROSKEY, DAVID J
		ART UNIT		PAPER NUMBER
		3736		
DATE MAILED: 06/01/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

CJ

Office Action Summary	Application No.	Applicant(s)	
	09/936,571	RAHE, MARTIN	
	Examiner	Art Unit	
	David J. McCrosky	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 September 2001.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,5,6 and 14 is/are rejected.
 7) Claim(s) 2-4 and 7-13 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/16/2002</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The amendment filed 14 September 2001 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the preliminary amendment starting at page 3, line 15, specifically, the description of a prior art reference is not supported by the original specification; the preliminary amendment starting at page 4, lines 2 and 3, specifically, the description of other objects that are achieved is not supported by the original specification; the preliminary amendment starting at page 10 adds a description of the invention and other possible modifications not supported by the original disclosure.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

Claims 1-14 are objected to because of the following informalities: proper Jepson type claim form is described by 37 CFR 1.75(e), "the improvement wherein" in line 6 of claim 1 should read --wherein the improvement comprises--; "Device" in line 1 of claims 2-14 should read --The device--; there is a lack of antecedent basis for "the swelling material" in line 2 of claim 7, "the reaction process" in line 3 of claim 11, and "the foil's features" in lines 4 and 5 of claim 11. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Capillary pressure sufficiently high to fill the measuring cell was not described in the original disclosure.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Haswell et al. The reference discloses an inflow opening (27-29) and a viewing window (14) through which a plurality of indicators (40) can be seen. The indicators (40) are arranged on a side bordering the viewing window (14). A liquid transporting means (3), capable of holding a swelling material for capillary action, wraps at the end of the inflow opening (27-29). See Fig. 8.

Claims 1, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Nugent. The reference discloses an inflow opening (12) and a viewing window (26) through which a plurality of indicators (22) can be seen. The indicators (22) are

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arranged on a side bordering the viewing window (26). A liquid transporting means (planar portion starting at (24)) wraps at the end of the inflow opening.

Allowable Subject Matter

Claims 2-4 and 7-13 would be allowable if rewritten to overcome the objections set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mattson discloses a urine test kit with a transparent window and liquid transporting means. Guirguis discloses a urine measuring cell with indicators.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. McCrosky whose telephone number is 703-305-1331. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mary Beth Jones can be reached on 703-308-3400. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJM



ERIC F. WINAKUR
PRIMARY EXAMINER